

LORD CHELMSFORD.

rupt Practices Prevention Act—although the evidence for the plaintiff rested solely upon the evidence of accomplices, it was held that the jury were rightly directed that they might find for the plaintiff upon such evidence though uncorroborated. Pigot, C.B., in his judgment in this case, observed: "To lay down, as a general proposition, that the presumption of innocence in a civil case cannot be rebutted while a doubt remains, would be, I believe, to affirm a doctrine perfectly new, and calculated to create the greatest embarrassment in trial by jury." In support of this the Chief Baron cites Best on Evidence, p. 120, 3rd ed., and *Cooper v. Slade*, 6 H. L. C. 772, per Willes, J. Mr. Taylor, in his work on Evidence, does indeed cite *Cooper v. Slade* in support of the statement that in mere civil disputes, when no violation of the law is in question, and no legal presumption operates in favour of either party, the preponderance of probability, due regard being had to the burthen of proof, may constitute sufficient ground for a verdict. But he goes on to assert (p. 127. 7th ed.) that the rule, that all imputations of crime must be strictly proved, is recognised alike by all tribunals, whether civil or criminal, and is equally effective in all proceedings, whether the question of guilt be directly or indirectly raised. And certainly the cases appear to support this language. Thus, where a fire insurance company pleaded that the plaintiff wilfully burnt down the premises, it was held that the jury, before they found a verdict against the plaintiff, must be satisfied that the crime imputed to him was proved by as clear evidence as would justify a conviction for arson: *Thurtell v. Beaumont*, 1 Bing. 389 (1823).

So again, where there was a plea of justification in an action of libel, stating that the plaintiff had committed the for-

gery which the libel accused him of, to justify a verdict for the defendant, the same evidence must be given as would be necessary to convict the plaintiff if he was on trial for those offences: *Chalmers v. Shackell*, 6 C. & P. 475 (1834). So with bigamy in a similar case: *Wilmet v. Harmer*, 8 C. & P. (1839). And the application of the presumption against crime to civil as well as criminal cases—or, which is much the same thing, whether the question arise directly or indirectly—seems strikingly illustrated by comparing *Brady's case*, 1 L. C. C. 329 (1784), with *McGregor v. Topham*, 3 H. L. C. 147 (1850). In the former case the charge was for taking a false oath, and the Court held that it was incumbent on the prosecutor to fit the evidence to the particular fact, and to prove every circumstance which was necessary to bring it within the range of the Law, not only by clear, precise, and exact evidence, but by the best evidence that is possible to be produced. And the necessity for the best evidence is also shown by *Williams v. E. India Co.*, 3 East 192 (1802).

In *McGregor v. Topham*, 3 H. L. C. 147, the question of forgery and perjury arose indirectly in connection with the trial of an issue *devisavit vel non*, and Lord Brougham said: "All Judges in the exercise of their high offices, and indeed not only Judges, but all Christian men, ought, in common charity due from one fellow creature to another, to take that course, if it can correctly and justly be taken, which shall avoid imputing the guilt of that most horrid crime of perjury to any of the parties whose conduct comes in question."

(To be continued.)

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Frederick Thesiger, Lord Chelmsford, died last month, as we have already